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Via Electronic Mail

Kim Hua  
California Public Utilities Commission  
Communications Division  
505 Van Ness Avenue  
San Francisco, CA 94102

**Re: Draft Resolution M-4848**

Dear Ms. Hua,

The Voice on the Net Coalition (“VON”) Coalition<sup>1</sup> hereby submits these comments in response to the Commission’s draft Resolution directing telephone corporations to impose a moratorium on disconnections and late fees for residential and small business voice customers for the duration of the Governor’s State of Emergency declaration concerning the COVID-19 pandemic. VON fully supports efforts to provide customers relief amid the unprecedented challenges caused by the pandemic, as VON members themselves can attest to the importance of steps they have proactively and voluntarily taken (and continue to take) to accommodate customers suffering hardships due to COVID-19. VON, however, disputes the Commission’s authority to impose these requirements on VoIP providers.<sup>2</sup>

The Resolution appears to reaffirm the CPUC’s flawed jurisdictional analysis, which fails to recognize that the FCC’s regulatory scheme for VoIP service preempts state regulation. Importantly, as the CPUC is aware, under the FCC’s *Vonage Preemption Order* (“*Vonage*

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<sup>1</sup>The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP communications. For more information, see [www.von.org](http://www.von.org).

<sup>2</sup> According to the Commission, the definition of “telephone corporations” includes Voice over Internet Protocol (VoIP) providers and wireless service providers. Draft Resolution at footnote 16, citing D.18-08-004, D.18-09-025, and D.20-07-011.

*Order*”), interconnected VoIP providers are subject to the FCC’s exclusive jurisdiction.<sup>3</sup> In that Order, the FCC concluded that the characteristics of interconnected VoIP make it impractical to separate the interstate and intrastate components, and as a result state regulations must “yield to important federal objectives” for VoIP services.<sup>4</sup> The FCC has generally applied a light-touch regulatory approach to VoIP providers to promote competition and the advancement of innovative services to the benefit of consumers. And, where necessary, the FCC has subject VoIP providers to certain targeted regulations, such as requiring the provision of 911 services and the protection of consumer information. To date, this approach centered on FCC oversight, has led to the proliferation of VoIP services and numerous pro-competitive benefits to the voice marketplace more broadly.

In a recent decision responding to VoIP provider challenges to the Emergency Disaster Relief Program, the CPUC relied on an element of the *Vonage Order* that warrants clarification. Specifically, the Commission suggested that the *Vonage Order* affirms that “states would retain a vital role in certain areas, such as consumer protection.”<sup>5</sup> However, the *Vonage Order* reference to consumer protection concerns generally applicable state laws protecting against waste, fraud, and abuse; it is not a broad grant of authority to adopt consumer protection measures targeting VoIP providers.<sup>6</sup> The draft Resolution requirements are not the type of general state consumer protection regulation contemplated in the *Vonage Order*, but rather an overreach of the Commission’s authority.

If adopted as drafted, the requirements will violate federal law and undermine the careful light-touch framework that has governed VoIP regulation for more than 15 years. The CPUC relied on the D.C. Circuit Court’s reasoning in *Mozilla v. FCC*<sup>7</sup> to support its conclusion that federal policy does not preempt the requirements imposed on VoIP providers by the state’s disaster program.<sup>8</sup> That assumes, though, that the *Mozilla* Court’s analysis of the broadband service at issue in that case extends to VoIP service, when in fact there are significant differences between the federal regulatory schemes governing broadband and VoIP services, including the classification of broadband as an information service (while the FCC has not similarly classified interconnected VoIP). The CPUC erred in its reliance on the *Mozilla* decision.

Throughout the pandemic, consumers have been protected because VoIP service providers have voluntarily granted varying forms of relief to customers impacted by COVID-19, such as deferring payments, delaying account terminations unless specifically requested by the customer, offering free service for several months, extending payment terms from 30 days to as much as 90 days, and allowing temporary or permanent suspension of lines without fees. These are examples of accommodations offered by VoIP service providers to assist customers

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<sup>3</sup> *Vonage Holdings Corporation*, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004), *petitions for review denied*, *Minnesota Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007) (“*Vonage Order*”).

<sup>4</sup> *Id.* at 22405.

<sup>5</sup> *Emergency Disaster Relief Program*, Order Modifying Decision (D.) 19-08-025, and Denying Rehearing of Decision, as Modified, Rulemaking 18-03-011, Decision 20-09-02, p. 38, n.145 (Cal. Pub. Util. Comm’n. 2020) (“CPUC Decision”).

<sup>6</sup> *Vonage Order*, 19 FCC at 22438.

<sup>7</sup> *Mozilla v. FCC*, 940 F.3d 1 (D.C. Cir. 2019).

<sup>8</sup> CPUC Decision at 42.

experiencing financial hardship due to the pandemic. These voluntary actions focused on specific customer need rather than prescriptive regulatory outcomes. VON urges the CPUC to build on this approach and permit VoIP providers to provide needed assistance on a voluntary basis and not apply a regulation that would otherwise be preempted.

VON respectfully requests that the Commission consider the views expressed herein as it moves forward with this proceeding.

Respectfully submitted,  
THE VON COALITION

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